IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8395 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHISH G JOSHI

Versus

GUJARAT UNIVERSITY

Appearance:

MR HM MEHTA SR.ADVOCATE WITH
MR KETAN A DAVE for Petitioner
MR SN SHELAT for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/11/2000

ORAL JUDGEMENT

Heard the learned advocates.

This petition challenges the order of the Post Graduate Admission Committee of the respondent-University on the representation made by the petitioner seeking

admission to the Post Graduate Medical Course. It appears that the petitioner has passed his Third Year MBBS Examination at fourth trial (according to the Admission Committee). He having passed the Third Year MBBS Examination at the fourth trial, he was denied admission to Post Graduate Medical course. Feeling aggrieved, the petitioner had preferred Special Civil Application No. 6384/92. By an order dated 29th September, 1992, made by the Division Bench of this court (Coram : A.P.Ravani (as he then was) and Y.B.Bhatt JJ), the impugned decision of the Admission Committee was quashed and set aside and the petitioner was directed to appear before the Admission Committee of the University and the Admission Committee of the University was directed to take decision in accordance with law. It was the case of the petitioner that he could not take the Third Year MBBS Examination on account of the reasons beyond his control, i.e. he was sick, and such failure can not be treated as a 'trial'. In support of his contention, he appears to have produced certain medical certificates. The Admission Committee, after hearing the petitioner and considering the medical certificates, was of the view that the ailment suffered by the petitioner i.e. chronic malaria, was not a serious ailment on account of which the petitioner could not have taken the examination when he was due to take the same. Besides, the medical certificate issued on 1st August, 1992, in respect of the recurrent malaria for the period from September 1989 to November, 1989, was not acceptable to the Committee. The Committee, therefore, held that the petitioner had passed Third Year MBBS Examination at the fourth trial. The relevant rules which have become effective from 1st July, 1992, provides, interalia, for eligibility for admission to Post Graduate Medical courses. The relevant Rule 1.1 (b) and the Note thereunder read as under :

Rule 1.1. :

Barring reserved seats under Rule 2, only those candidates who fulfil the following conditions shall be eligible for admission to P.G.Medical course :

(b) For rest of the candidates : Those who have passed 1st MBBS Examination at 1st or 2nd trial, Second MBBS at 1st or 2nd trial and 3rd MBBS examination at 1st, 2nd or 3rd trial.

Note: First trial is deemed to take place when he is

due to appear for the examination, irrespective of his actual appearance, provided that non-appearance is not a result of reasons beyond his control, similarly 2nd, 3rd, 4th etc. trials relating to subsequent examinations.

Rule 7.1 provides for preparation of the merit list.

Clause (V) thereof reads as under :

(V) The percentage in above calculation should be modified by deduction of 1 for each unsuccessful trial in the concerned examination. 'Unsuccessful trial' includes, the number of terms he has lost after he has become due, irrespective of his appearance, provided that non-appearance is not as a result of reasons beyond his control.

Mr. Mehta has submitted that there was no reason why the medical certificates produced by the petitioner ought not to have been accepted by the Admission Committee and the Admission Committee ought to have taken a sympathetic view of the matter. He has further submitted that the appeal preferred against the impugned decision before the Vice Chancellor has been dismissed without giving any reason for the same. He places on record a copy of the communication dated 9th February, 1993, informing him about the decision of the Vice Chancellor. He has also submitted that the Rules in question have become effective from 1st July, 1992. The petitioner was supposed to take Third year MBBS Examination in the month of May, 1989, and had passed the Third Year MBBS Examination in 1991. The said Rules, therefore, shall not apply to the case of the petitioner.

I am unable to agree with the contentions raised by Mr. Mehta. The Admission Committee has considered the case of the petitioner in detail and it has given cogent reasons for not accepting the medical certificates produced by the petitioner. The admission to the Post Graduate Medical course is an administrative matter, and this court would not interfere with the same unless the impugned action is found to be either malafide or arbitrary. In the present case, malafide is not even alleged and the order of the Admission Committee can not be said to be arbitrary. I, therefore, see no reason why this court should interfere with the decision of the Admission Committee which is confirmed by the Vice

Chancellor also. Besides, the order dated 9th February, 1993, placed on record by Mr. Mehta is a mere communication of the order of the Vice Chancellor. It, therefore, can not be said that the Vice Chancellor has given no reason for his decision. Besides, in the event the Vice Chancellor accepts the reasoning of the Admission Committee and agrees with its decision, the Vice Chancellor would not be required to give detailed reasons for his decision. It is also not true that the rules which have come in force on 1st July, 1992, shall not apply to the case of the petitioner. Those Rules shall apply to all cases where admission to Post Graduate Medical course is sought to be obtained after 1st July, 1992. It is not disputed that the petitioner had sought admission to Post Graduate Medical course after 1st July, 1992. In view of the above referred Rules, 1.1.(b) and 7.1 (V), it can not be gainsaid that the examinations which the petitioner was due to take shall be considered as 'trial' for the purposes of admission to Post Graduate Medical Course even though the petitioner did not make an attempt to take that examination. The petitioner has failed to prove that he could not take the examinations which he was due to take in the months of May 1989 and November 1989 for the reasons beyond his control. Those two examinations are, therefore, rightly been treated as 'trials'. In that view of the matter, the petitioner is rightly held to have passed Third Year MBBS Examination at the fourth trial. The impugned decision is thus in consonance with the relevant rules and does not warrant interference.

No other contention is raised before me.

The petition is dismissed. Rule is discharged.

(MS R.M.DOSHIT J)

JOSHI